

REMARKS/ARGUMENTS

The above-identified patent application has been reviewed in light of the Examiner's Action dated May 1, 2007. Claims 12 and 15-39 are pending. Claim 26 has been rejected under 35 U.S.C. § 112 as being indistinct. Claims 20-23 and 33-37 have been rejected under 35 USC § 102(e) as being anticipated by U.S. Patent No. 6,618,875 to Oropallo et al. ("Oropallo"). Claims 20-22 and 33-36 have been rejected under 35 USC § 102(b) as being anticipated by U.S. Patent No. 5,350,266 to Espey et al. ("Espey"). Claims 20-22 and 33-36 have been rejected under 35 USC § 102(b) as being anticipated by U.S. Patent No. DE 1,163,257 to Gebert ("Gerbert"). Claims 23-25 and 37-39 have been rejected under 35 USC § 103(a) as being obvious in light of Oropallo in view of U.S. Patent No. 6,192,531 to Fritz et al. ("Fritz"). Claims 12, 15-18 and 26-31 have been rejected under 35 USC § 103(a) as being obvious in light of Oropallo in view of Lewis. Claims 18, 19, 31 and 32 have been rejected under 35 USC § 103(a) as being obvious in light of Oropallo in view of Lewis and further in view of Fritz. Claims 23-25 and 37-39 have been rejected under 35 USC § 103(a) as being unpatentable over Gerbert and Fritz. Claims 12, 15-17 and 26-30 have been rejected under 35 USC § 103(a) as being unpatentable over Gebert and Lewis. Finally, Claims 18, 19, 31 and 32 have been rejected under 35 USC § 103(a) as being obvious in light of a combination of Gerbert, Lewis and Fritz.

Objections to the Specification

The specification has been amended to address the Examiner's objection.

Claim Rejections - 35 U.S.C. § 112

Claim 26 has been rejected as being indefinite. As applicant has stated in the past, the bathtub is not part of the invention, alternatively, the claimed subject matter of Claim 26 is positioned in relation to the bathtub. Stated differently, the bathtub is the environment that the claimed subcombination of elements is *adapted to* be interconnected to. The U.S. Court of Customs and Patent Appeals, the precursor of the Federal Circuit Court of Appeals, in In Re Dean followed the rationale that components that are "adapted to" be used in conjunction with claimed elements do not limit the claim. 291 F.2d 947 (C.C.P.A. 1961). In Re Dean concerned a patent application that claimed a camera having a shutter mechanism with a pair of electro-responsive devices that were "adapted to be individually coupled to said [shutter actuating] elements". *Id.* at 949. The court disagreed with the decision of the Patent Office Board of Appeals that construed the words "adapted

to be individually coupled to said [shutter-actuating] elements” to mean a combination of the timer with a shutter. The court stated: “[t]o state mere adaptability of these parts of the timer to perform the coupling function does not import into the claim the shutter to which they are coupled.” Id. at 951. Accordingly, by stating that the claimed elements are “adapted to” be joined to a bathtub does not import the bathtub into the claim. Thus, in light of well-settled precedent, it is respectfully submitted that there can be no confusion as to whether the bathtub is part of the presented claims. Nonetheless, mention of the bathtub to indicate environment of the present invention is appropriate. Antecedent basis for the bathtub can be found in the preamble.

Claim Rejections - 35 U.S.C. § 102(e) - Oropallo

Claims 20-23 and 33-37 have been rejected as being anticipated by Oropallo. Withdrawal of this rejection was requested in light of a Declaration pursuant to 37 C.F.R. §1.131 that was filed on April 5, 2007. The Examiner has stated that the Declaration was deficient in that diligence was not shown. Applicant traverses this assertion and directs the Examiner’s attention to Naber v. Cricchi, 567 F.2d 382 (C.C.P.A 1977) wherein the court indicated that work in the preparation for filing related patent applications may suffice to show “reasonable diligence” as “work required to develop a first invention in order to develop or reduce to practice a second invention”. The filing of U.S. Patent Application Serial Nos. 09/593,724, 10/229,533 and 10/222,062, which are related to the above-identified application, are thus respectfully submitted to show reasonable diligence. As stated in Naber, the inventions sought in separate and related patent applications do not have to be the same to meet the reasonable diligence requirement. Therefore, it is asserted that the Declaration of April 5, 2007 meets the diligence requirement, thereby requiring withdrawal of all rejections related to Oropallo be withdrawn.

Claim Rejections - 35 U.S.C. § 102(b) - Espey

Claims 20-22 and 33-36 have been rejected as being anticipated by Espey. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Applicant directs the Examiner’s attention to the arguments set forth in an Appeal brief filed in conjunction with the above-identified application on November 18, 2005. As succinctly stated therein, Espey discloses a protective cap that is pressed downwardly over a nut 20 in such a way that projections 52 are received in respective

slots 32 on the side faces of the nut 20. As Espey's cap is moved further, ramps 53 of the projections 52 engage bridge portions 34 to flex sidewalls 41-46 radially outward to permit the projections to move across the respective bridge. Once the projections have moved in an axial direction sufficient to clear the bridge, the walls flex inwardly to bring the inward end faces 54 of the projections in tight contact with the end wall 36 of the respective second slot 33 (Espey column 3, lines 31-43).

There is no teaching that the "lugs" 21-26 of Espey, "frictionally detachably engage" the inner surface of a cap. Rather, Espey's cap is fitted to the nut by pressing downwardly such that the projections 52 snap into slots 33. Such an arrangement is not frictionally detachable and removal of the cap would require a tool of some sort of tool to pry the projections from the slot 33. Since each and every element set forth in Claims 20 and 33 are not found in Espey, withdrawal of the rejection is respectfully requested. It is also requested that the rejections to Claims 21, 22 and 34-36 also be withdrawn since these claims depend on an allowable claim. These statements should be persuasive since upon review of the file history it will be seen that after such statements were previously made the application was allowed.

Claim Rejections - 35 U.S.C. § 102(b) - Gebert

Claims 20-22 and 33-36 have been rejected as being anticipated by Gebert. Independent Claims 20 and 33, as outlined above, both require a fastening member, such as a nut, that includes at least one protrusion (e.g. lug) extending therefrom for frictionally detachably engagement with an inner surface of a flange on a cap. Alternatively, Gebert appears to disclose a plate positioned on the inner surface of the tub that receives the cap. In addition, it does not appear that the plate of Gebert possesses the required protrusions to engage the cap as required by Claim 20. At least for these reasons, it is respectfully requested that the rejections to Claims 20 and 33, and their dependants, Claims 21, 22 and 34-36 be withdrawn.

Claim Rejections - 35 U.S.C. § 103(a) - Oropallo and Fritz

Claims 23-25 and 37-39 have been rejected as being obvious in light of a combination of Oropallo and Fritz. As outlined above, Oropallo is not prior art that can be combined with Fritz to support this rejection. Accordingly, withdrawal of the rejection to Claims 23-25 and 37-39 is respectfully requested.

Claim Rejections - 35 U.S.C. § 103(a) - Oropallo and Lewis

Claims 12, 15-18 and 26-31 have been rejected as being obvious in light of a combination of Oropallo and Lewis. As outlined above, Oropallo is not prior art that can be combined with Lewis to support this rejection. Accordingly, withdrawal of the rejection to Claims 12, 15-18 and 26-31 is respectfully requested.

Claim Rejections - 35 U.S.C. § 103(a) - Oropallo, Lewis and Fritz

Claims 18, 19, 31 and 32 have been rejected as being obvious in light of a combination of Oropallo, Lewis and Fritz. As outlined above, Oropallo is not prior art that can be combined with Lewis and Fritz to support this rejection. Accordingly, withdrawal of the rejection to Claims 18, 19, 31 and 32 is respectfully requested.

Claim Rejections - 35 U.S.C. § 103(a) - Gebert and Fritz

Claims 23-25 and 37-39 have been rejected as being obvious in light of a combination of Gerbert and Fritz. As outlined above, neither Gerbert or Fritz disclose a cap that frictionally engages the lugs or protrusions of a fastening member or nut, as found in parent Claims 20 and 33. Accordingly, withdrawal of the rejection to Claims 23-25 and 37-39 is respectfully requested.

Claim Rejections - 35 U.S.C. § 103(a) - Gebert and Lewis

Claims 12, 15-17 and 26-30 have been rejected as being obvious in light of a combination of Gerbert and Lewis. As outlined above, neither Gerbert or Lewis disclose a cap that frictionally engages the lugs or protrusions of a fastening member or nut, as found in parent Claims 12 and 26. Accordingly, withdrawal of the rejections to Claims 12, 15-17 and 26-30 is respectfully requested.

Claim Rejections - 35 U.S.C. § 103(a) - Gebert, Lewis and Fritz

Claims 18, 19, 31 and 32 have been rejected as being obvious in light of a combination of Gerbert, Lewis and Fritz. As outlined above, neither Gerbert, Lewis or Fritz disclose a cap that frictionally engages the lugs or protrusions of a fastening member or nut, as found in parent Claims 12 and 26. Accordingly, withdrawal of the rejections to Claims 18, 19, 31 and 32 is respectfully requested.

Conclusion

In addition, to the arguments and remarks set forth above, Applicant incorporates all prior arguments and remarks made during the long prosecution of this case, which dates back almost four years. Many of the references now relied upon by the Examiner to reject claims have long ago been addressed and distinguished. Applicant respectfully disagrees with the Examiner's repeated assertions that Applicant has not substantively argued against grounds for rejection beyond noting dependency. To the contrary, Applicant has provided detailed and repeated analysis and reasons to overcome the Examiner's rejections of claims, including those presented in the numerous amendments and the Appeal Brief earlier presented. The Notice of Allowance dated August 14, 2006 is particularly telling as to the patentability of the present invention over the cited prior art of record.

Based upon at least the foregoing, Applicant believes that all pending claims are in condition for allowance and such disposition is respectfully requested. Applicant also respectfully traverses the remainder of the Examiner's assertions as to what is disclosed in and/or taught by Oropallo, Gebert, Lewis, Espey and Fritz. That is, since the arguments made herein are believed to sufficiently address the rejections, any Examiner assertions not specifically addressed are not admitted as true. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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